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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,143	10/23/2003	Kulvir Singh Bhogal	AUS920030492US1	9523
47959 7590 04/09/2008 IBM AUSTIN (ANTHONY ENGLAND) C/O LAW OFFICE OF ANTHONY ENGLAND PO BOX 5307 AUSTIN, TX 78763-5307				
EXAMINER				
KUMAR, ANIL N				
ART UNIT		PAPER NUMBER		
2174				
MAIL DATE		DELIVERY MODE		
04/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/692,143

Applicant(s)

BHOGAL, KULVIR SINGH

Examiner

ANIL N. KUMAR

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8 and 10-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the Appeal Brief filed on January 21st, 2008. Claims (8, 10-21) continue to be pending and have been considered below.

2. In view of the Appeal Brief filed on 10/22/07, PROSECUTION IS HEREBY REOPENED. New grounds for rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claim1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al. ("Cheng", US 6,151,643) in view of Hsieh et al. ("Hsieh", US 2002/0158900 A1).

Claims 8 and 15: Cheng disclose an apparatus for deploying/updating software, comprising;

- a processor (service provider computer system 102, Fig. 1);
- a memory (Fig. 7) for storing program instructions executable on the processor to perform the steps of:
 - providing a Web site on a first computer system coupled to a network for presenting a user with an interface (i.e. ... system for updating diverse software products... column 6 lines 11-30 and Fig. 1);
 - receiving from the user a selection of software applications for deploying to a target computer system (i.e. ...user may select one or more software products ... column 8 line 21-31 and Fig. 4 under Application select box);
 - receiving from the user a selection of hardware for the target system and responsively determining what drivers correspond to the indicated hardware; wherein the first computer system has a pre-built array of software images stored thereon for combinations of hardware and the software that the user may select (i.e. ...user may select one or more software products ... column 8 line 21-31 and Fig. 4 under Application/Driver select box), the respective software images being substantially identical to respective images resulting

- on a target computer system hard drive from an installation process of corresponding pre-load images, so that the respective software images include software application configuration information, files from the corresponding pre-load images, and links to drivers for hardware of the target system (software update information includes applications, binary files, text files, and the like, column 6 lines 31-40);
- selecting a certain one of the pre-built images by the first computer system responsive to the received user selections, wherein the selected image has the software applications selected by the user and the drivers for the hardware selected by the user (i.e. ... displays the list of applicable software... column 7 lines 62-64 and see Applications/Driver in Fig. 4);
 - receiving a first order from the user for the certain image of the selected software applications deployable to the target system hardware, including a selection by the user of a method for delivery of the selected image (i.e. ... for each selected software update... column 8 lines 32-36 and Fig. 5);
 - and sending the user a loading utility with the selected image, wherein such a loading utility enables transferring the software image to the target computer system (i.e..... client application downloads the software updates... column 8 lines 36-43) without relying on the target computer system having an operating system shell or boot diskette (i.e. sending a physical media to the client, like preconfigured OS with applications that can be installed manually), and wherein the responsive to execution of the loading utility by the target

computer system, the target computer system erases the hard drive and transfers the software images to the target computer system (The recovery – deploy- function deletes the files installed for the software update, and using the archived – or new selection - information created by the install monitor during the installation – selection - of the product, restores the client computer system 101 to its configuration immediately before the installation – or to new configuration - of the product, column 9 lines 28-55);

but does not explicitly teach, pre-built array includes post-load or ghost images. However, Hsieh teach, a Graphical user interfaces for network management automated provisioning environment, and furthermore teach, once the software programs and settings have been determined, they can be packaged in a fixed format, sometimes referred to as a "ghost" or "brick", and automatically disseminated to all of the appropriate computers (paragraph [0008]). It would have been obvious to an artisan at the time of this invention to include post-load or ghost images to pre-built arrays, as taught by Hsieh, with Cheng's method as acknowledged in the applicants specification (a loading utility, Norton Ghost, offered by Symantec Corporation, paragraph [0009]), in order to provide a loading utility that includes post-load or ghost images as well as other software images.

Claim 10: Cheng disclose wherein the sending of the loading utility with the selected image further includes sending the loading utility on bootable media,

and wherein the utility further includes instructions for causing the target system to transfer the image to a hard drive of the target system responsive to the target system booting to the utility on the bootable media when the target system is turned on (i.e..... client application performs the installation, executing any necessary decompression, installation, or setup applications necessary to install... column 9 lines 3-10 and Fig. 2).

Claim 11: Cheng disclose,

- maintaining a record of the order for the software applications and drivers included in the certain image that is sent, wherein the record is associated with an order identifier and user identifier (i.e. ... specifies one exemplary schema of the user profile database... column 10 lines 33-44 and Fig.14);
- receiving a second order for the user, including the user or order identifier; retrieving the record for the first order responsive to the user or order identifier (i.e. ...user logs in... to determine the list of installed software products... column 7 lines 11-56 and Fig. 2);
- presenting a list of the software applications and drivers included in the certain image that was sent for the first order (i.e. ...displays the list of applicable software... column 7 lines 62-64 and Fig. 2);
- and receiving a selection indicating ones of the software programs of the first order to update for the second order or indicating software programs for the

second order in addition to those of the first order (i.e..... for selected software client software performs an installation... column 8 lines 32-33).

Claim 12: Cheng disclose

- maintaining a record of the order for the software applications and drivers included in the certain image that is sent, wherein the record is associated with an order identifier and user identifier (i.e. ... specifies one exemplary schema of the user profile database... column 10 lines 33-44 and Fig.14);
- receiving a second order for the user, including the user or order identifier, retrieving the record for the first order responsive to the user or order identifier (i.e. ...user logs in... to determine the list of installed software products... column 7 lines 11-56 and Fig. 2);
- and presenting, responsive to the user or order identifier, a list of suggested updates for the software programs of the first order (i.e. ...illustrates a sample user interface display of applicable software updates... column 7 lines 64-66 and Fig. 4).

Claim 13: Cheng disclose,

- maintaining a record of the order for the software applications and drivers included in the certain image that is sent, wherein the record is associated with an order identifier and user identifier (i.e. ... specifies one exemplary schema of the user profile database... column 10 lines 33-44 and Fig.14);

- receiving a second order for the user, including the user or order identifier;
- retrieving the record for the first order responsive to the user or order identifier; (i.e. ...user logs in... to determine the list of installed software products... column 7 lines 11-56 and Fig. 2);
- and presenting, responsive to the user or order identifier, a list of suggested updates for the software programs for the second order in addition to first order (i.e. ...illustrates a sample user interface display of applicable software updates... column 7 lines 64-66 and Fig. 4. Note the first order, i.e. Quicken 5.0, second order, i.e. Update from 5.0 to 5.0F, is displayed, side by side).

Claim 14: Cheng disclose

- maintaining a record of the order for the software applications and drivers included in the certain image that is sent, wherein the record is associated with an order identifier and user identifier (i.e. ... specifies one exemplary schema of the user profile database... column 20 lines 33-44 and Fig.14);
- receiving a second order for the user, including the user or order identifier (i.e. ...user logs in 201..., Fig. 2) ;
- retrieving the record for the first order responsive to the user or order identifier (i.e.... to determine the list of installed software products... column 7 lines 11-56 and Fig. 2);
- receiving user information that informs the computer system about needs of the user (i.e. see Figs. 3 and 13a-13e);

- maintaining a profile of the user, wherein the profile is associated with the user identifier and the received user information (i.e. ... specifies one exemplary schema of the user profile database ... column 20 lines 33-59 and Fig. 14);
- and presenting, responsive to the user information, a list of suggested updates for the software programs of the first order or a list of suggested software programs for the second order in addition to those of the first order (i.e. ...the user may limit the list to only those software products that need updating... ... column 8 lines 10-20 and Figs. 2 ,4).

Claim 15 is similar in scope to claim 8, and therefore rejected under similar rationale. Furthermore, Cheng disclose, a computer program product, stored on a physical, computer readable medium, for deploying software, said computer program product having instructions for execution by a computer, wherein the instructions cause the computer to implement a method when executed by the computer (The present invention relates to systems and methods for computer-based customer support, and more particularly, to systems, methods, and products for automatically updating software products from diverse software vendors on a plurality of end-user, client computer systems, column 1 lines 10-15).

Claim 16: Cheng disclose

- receiving a first order from the user for the certain image of the selected software applications deployable to the target system hardware, including a selection by the user of a method for delivery of the selected image (i.e. ... for each selected software update... column 8 lines 32-36 and Fig. 5);
- and sending the user a loading utility with the selected image, wherein such a loading utility enables transferring the post-load image to the target computer system (i.e..... client application downloads the software updates... column 8 lines 36-43) without relying on the target computer system having an operating system shell or boot diskette (i.e. sending a physical media to the client, like preconfigured OS with applications that can be installed manually).

Claim 17 is similar in scope to claim 10, and therefore rejected under similar rationale.

Claim 18 is similar in scope to claim 11, and therefore rejected under similar rationale.

Claim 19 is similar in scope to claim 12, and therefore rejected under similar rationale.

Claim 20 is similar in scope to claim 13, and therefore rejected under similar rationale.

Claim 21 is similar in scope to claim 14, and therefore rejected under similar rationale.

Response to Arguments

5. Applicant's arguments filed on January 21st, 2008 have been fully considered but they were found not persuasive.

A. Applicant conflates, " In a telephone interview on November 13, 2007, Applicant discussed this and reached agreement that Examiner Kumar will enter the amendments submitted herein in connection with this Appeal Brief, since the amendments submitted herein present subject matter that has already been considered and for which searches have already been conducted". The examiner regrets any misunderstanding, but strenuously disagrees with any sort of agreement being reached. This interview, being informal, was initiated by the applicant, after the Advisory Action had been sent out, as acknowledged by the applicant. The applicant merely wanted some clarification as he was anticipating an appeal brief, and asked the examiner to enter the after final amendment, merely to make it clearer for the appeal process. The Examiner explained to the applicant, that he does not have the authority to make any agreement with the

applicant. Only a Primary Examiner or a SPE present at the formal telephone interview can make any agreements, that will be followed by a formal interview summary being posted to the applicant. This being in informal/courtesy conversation, the examiner declined to enter the amendment, advised the applicant as such. The conversation ended amicably, with NO disagreements or any other open issues

- B. Applicant argues, " The rejection of claims 8 and 15 under 35 U.S.C. 102(b) based upon Cheng is not proper, because Cheng does not teach a "post-load image" as the term is specifically defined in the claims and in the context of additional, specific claim limitations". The examiner respectfully disagrees, and maintains the rejection based on new citation. Please refer to Claim 8 and 15 for details.
- C. Applicant argues," The rejection of claims 13 and 20 under 35 U.S.C. 102(b) based upon Cheng is not proper, because Cheng does not teach presenting, responsive to a received user or order identifier, a list of suggested software programs for a second order in addition to those of a first order, as recited in the context of specific claim limitations". The examiner respectfully disagrees, and maintains the rejection based on new citation. Please refer to Claim 13 and 20 for details.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anil N. Kumar whose telephone number is (571) 270-1693. The examiner can normally be reached on Wednesdays and alternate Mon-Tue and Thu-Fri EST (Alternate Mon-Tue and Thu-Fri off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ANK

2/27/2008

/David A Wiley/

Supervisory Patent Examiner, Art Unit 2174